

## **EXHIBIT 52**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS, *et al.*

*Plaintiffs,*

v.

NATIONAL INSTITUTES OF HEALTH, *et al.*

*Defendants.*

No. 1:25-cv-10338

**DECLARATION OF SALLY MORTON**

I, Sally Morton, hereby declare:

1. I am a resident of the State of Arizona. I am currently employed by Arizona State University as Executive Vice President of the ASU Knowledge Enterprise and as a Professor in the College of Mathematical and Statistical Sciences and the College of Health Solutions. In my capacity as Executive Vice President, I lead the university's research and economic development portfolio to advance research priorities, oversee ASU's research institutes and initiatives, and drive corporate engagement, strategic partnerships, intellectual property, and technology transfer.
2. As Executive Vice President of the ASU Knowledge Enterprise, I have personal knowledge of the matters set forth below, or have knowledge of the matters based on my review of information and records provided to me by ASU employees and believe that information to be true. If called as a witness, I could and would testify competently to the matters set forth below.
3. I am providing this declaration to explain certain impacts of National Institutes of Health

(NIH) Notice Number NOT-OD-25-068, *Supplemental Guidance to the 2024 NIH Grants Policy Statement: Indirect Cost Rates* (Notice), which purports to immediately reduce facilities and administrative costs payments (also known as indirect costs) to 15%.

4. ASU is a comprehensive public research university committed to advancing research and discovery of public value. ASU is one of the fastest-growing research enterprises in the United States, with research expenditures of \$904 Million in the fiscal year ending June 30, 2023.
5. Sponsored funding from federal agencies constitutes a significant portion of ASU's annual research expenditures. In the fiscal year ending June 30, 2024, ASU expended \$508 Million received from federal agencies to conduct research work under approved agreements (grants, contracts, and cooperative agreements).
6. ASU receives sponsored funding from at least 23 different federal agencies, including NIH.
7. ASU has a Negotiated Indirect Cost Rate Agreement with NIH. Ex. A.
8. The indirect cost rate in ASU's Negotiated Indirect Cost Rate Agreement is 57% for on-campus research.
9. In federal fiscal year 2024, ASU received 98 awards from NIH, totaling approximately \$47 million. Of that amount, approximately \$33.2 million were for direct costs and approximately \$13.9 million were for indirect costs. Because certain direct cost categories are exempted from calculating indirect costs, ASU had a blended indirect cost rate of approximately 41%.
10. Recovering indirect costs of research is essential to sustaining the university's research infrastructure generally, including the specific infrastructure needed to perform the

university's current grant agreements with NIH. Indirect cost funding pays for critical expenses that keep research programs operational. These include the costs of operating physical research facilities, such as electricity, water, and utilities, as well as personnel costs for employees who directly support research operations, such as those who are engaged in environmental health and safety, animal care, data management, and grant compliance.

11. The NIH Notice, if implemented, immediately reduces millions of dollars in indirect cost recovery that ASU believed would be available to it when it entered into its grant agreements with NIH and other funding agencies. The university made personnel and operational plans and decisions, and entered into employment and other contracts, in reliance on that understanding. The reduction of NIH indirect cost recovery by more than half jeopardizes the university's ability to conduct not only the research work contemplated by its agreement with NIH but other research work that the shared facilities and personnel paid for through indirect cost funds support.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 17th day of February, 2025, in Washington D.C.

A handwritten signature in blue ink, appearing to read 'Sally Morton', is written over a horizontal line.

Sally Morton  
Executive Vice President of the Arizona  
State University Knowledge Enterprise

# EXHIBIT A

**COLLEGES AND UNIVERSITIES RATE AGREEMENT**

EIN:  
 ORGANIZATION:  
 Arizona State University  
 Fulton Center 410, Rm. 4478  
 P.O. Box 87705  
 Tempe, AZ 85287-7605

Date: 07/30/2024  
 FILING REF.: The preceding  
 agreement was dated  
 05/24/2023

The rates approved in this agreement are for use on grants, contracts and other agreements with the Federal Government, subject to the conditions in Section III.

**SECTION I: INDIRECT COST RATES**

RATE TYPES:		FIXED	FINAL	PROV. (PROVISIONAL)	PRED. (PREDETERMINED)
		<b><u>EFFECTIVE PERIOD</u></b>			
<b><u>TYPE</u></b>	<b><u>FROM</u></b>	<b><u>TO</u></b>	<b><u>RATE(%)</u></b>	<b><u>LOCATION</u></b>	<b><u>APPLICABLE TO</u></b>
PRED.	07/01/2020	06/30/2023	57.00	On-Campus	Organized Research
PRED.	07/01/2020	06/30/2023	26.00	Off-Campus	Organized Research
PRED.	07/01/2020	06/30/2023	48.00	On-Campus	Instruction
PRED.	07/01/2020	06/30/2023	26.00	Off-Campus	Instruction
PRED.	07/01/2020	06/30/2023	44.40	On-Campus	Other Sponsored Activities
PRED.	07/01/2020	06/30/2023	26.00	Off-Campus	Other Sponsored Activities
PROV.	07/01/2023	Until Amended		(1)	

**\*BASE**

Modified total direct costs, consisting of all salaries and wages, fringe benefits, materials, supplies, services, travel and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Modified total direct costs shall exclude equipment, capital expenditures, charges for patient care, participant support costs, student tuition remission, rental costs of off-site facilities, scholarships, and fellowships as well as the portion of each subgrant and subcontract in excess of \$25,000.

(1) Use same rates and conditions as those cited for fiscal year ending June 30, 2023.

ORGANIZATION: Arizona State University

AGREEMENT DATE: 07/30/2024

**SECTION I: FRINGE BENEFIT RATES\*\***

<b>TYPE</b>	<b>FROM</b>	<b>TO</b>	<b>RATE(%)</b>	<b>LOCATION</b>	<b>APPLICABLE TO</b>
FIXED	7/1/2024	6/30/2025	30.40	All (A)	Faculty
FIXED	7/1/2024	6/30/2025	36.80	All (A)	Staff
FIXED	7/1/2024	6/30/2025	10.90	All (A)	Part Time
FIXED	7/1/2024	6/30/2025	1.20	All (A)	Students
FIXED	7/1/2024	6/30/2025	8.50	All (A)	RA/TA
FIXED	7/1/2024	6/30/2025	25.30	All (A)	Post Doc
PROV.	7/1/2025	Until Amended			Use same rates and conditions as those cited for fiscal year ending June 30, 2025.

**\*\* DESCRIPTION OF FRINGE BENEFITS RATE BASE:**

(A) Salaries and wages including vacation, holiday, sick leave pay and other paid absences.

ORGANIZATION: Arizona State University  
AGREEMENT DATE: 07/30/2024

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## **SECTION II: SPECIAL REMARKS**

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### TREATMENT OF FRINGE BENEFITS:

The fringe benefits are charged using the rate(s) listed in the Fringe Benefits Section of this Agreement. The fringe benefits included in the rate(s) are listed below.

### TREATMENT OF PAID ABSENCES:

Vacation, holiday, sick leave pay and other paid absences are included in salaries and wages and are claimed on grants, contracts and other agreements as part of the normal costs for salaries and wages. Separate claims for the costs of these paid absences are not made except for paid absences that have been earned but not taken when an individual separates from the university prior to the completion of the grant, contract or other agreement.

### OFF-CAMPUS DEFINITION

An off-campus rate is applicable to those projects conducted in facilities not owned or operated by the University, which include charges for facility rental as a direct expenditure, and for which more than 50% of the project salaries and wages are for effort conducted in the rental facility.

### DEFINITION OF EQUIPMENT

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds \$5,000.

The following fringe benefits are included in the fringe benefit rate(s):

FICA, WORKERS COMPENSATION, HEALTH/DENTAL/LIFE INSURANCE, UNEMPLOYMENT INSURANCE, DISABILITY INSURANCE, ACCIDENTAL DEATH, RETIREMENT PLANS (STATE RETIREMENT PROGRAMS AND TIAA/CREF), FLEXIBLE SPENDING PLAN, RETIREE ACCUMULATIVE SICK LEAVE, AND EMPLOYEE TUITION REMISSION, EMPLOYEE WELLNESS, SABBATICAL PAYMENTS, EMPLOYEE ASSISTANCE, AND TERMINAL LEAVE.

This agreement updates fringe benefits only.

### NEXT PROPOSAL DUE DATE

Your next indirect cost based on actual costs for 06/30/22 is in-house for review, and fringe benefits proposal based on actual costs for FYE 06/30/24 is due by 12/31/24.



ORGANIZATION: Arizona State University  
 AGREEMENT DATE: 07/30/2024

### SECTION III: GENERAL

**A. LIMITATIONS:**

The rates in this Agreement are subject to any statutory or administrative limitations and apply to a given grant, contract or other agreement only to the extent that funds are available. Acceptance of the rates is subject to the following conditions: (1) Only costs incurred by the organization were included in its indirect cost pool as finally accepted: such costs are legal obligations of the organization and are allowable under the governing cost principles; (2) The same costs that have been treated as indirect costs are not claimed as direct costs; (3) Similar types of costs have been accorded consistent accounting treatment; and (4) The information provided by the organization which was used to establish the rates is not later found to be materially incomplete or inaccurate by the Federal Government. In such situations the rate(s) would be subject to renegotiation at the discretion of the Federal Government.

**B. ACCOUNTING CHANGES:**

This Agreement is based on the accounting system purported by the organization to be in effect during the Agreement period. Changes to the method of accounting for costs which affect the amount of reimbursement resulting from the use of this Agreement require prior approval of the authorized representative of the cognizant agency. Such changes include, but are not limited to, changes in the charging of a particular type of cost from indirect to direct. Failure to obtain approval may result in cost disallowances.

**C. FIXED RATES:**

If a fixed rate is in this Agreement, it is based on an estimate of the costs for the period covered by the rate. When the actual costs for this period are determined, an adjustment will be made to a rate of a future year(s) to compensate for the difference between the costs used to establish the fixed rate and actual costs.

**D. USE BY OTHER FEDERAL AGENCIES:**

The rates in this Agreement were approved in accordance with the authority in Title 2 of the Code of Federal Regulations, Part 200 (2 CFR 200), and should be applied to grants, contracts and other agreements covered by 2 CFR 200, subject to any limitations in A above. The organization may provide copies of the Agreement to other Federal Agencies to give them early notification of the Agreement.

**E. OTHER:**

If any Federal contract, grant or other agreement is reimbursing indirect costs by a means other than the approved rate(s) in this Agreement, the organization should (1) credit such costs to the affected programs, and (2) apply the approved rate(s) to the appropriate base to identify the proper amount of indirect costs allocable to these programs.

**BY THE INSTITUTION:**

Arizona State University

(INSTITUTION)

*Matthew Smith*

(SIGNATURE)

Matthew J. Smith

(NAME)

VP for Budget Planning & Management

(TITLE)

08/15/2024

(DATE)

**ON BEHALF OF THE GOVERNMENT:**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

(AGENCY)

Arif M. Karim -S

Digitally signed by Arif M. Karim -S  
 Date: 2024.08.01 09:25:04 -05'00'

(SIGNATURE)

Arif Karim

(NAME)

Director, Cost Allocation Services

(TITLE)

07/30/2024

(DATE)

HHS REPRESENTATIVE: Jeanette Lu

TELEPHONE: (415) 437-7820